YII MING TUNG

v.

PP

COURT OF APPEAL, PUTRAJAYA
ZAHARAH IBRAHIM JCA
ABDUL AZIZ RAHIM JCA
VARGHESE GEORGE JCA
[CRIMINAL APPEAL NO: Q-05-37-2011-2013]
19 JUNE 2014

CRIMINAL LAW: *Penal Code - Section 302 - Murder - Autopsy report - Admissibility - Whether report prepared by a medical doctor authorised under s. 34C Medical Act 1971 - Construction of definition of term 'government medical officer' or 'medical officer' in s. 2 Criminal Procedure Code - Usage of word 'includes' - Whether to extend meaning of term 'government medical officer' - Whether government medical officer requires written authorisation by Director General of Health to perform post mortem on deceased - Whether authorisation implied by virtue of appointment in medical service of public service - Whether a medical doctor within meaning of s. 399(2(b) Criminal Procedure Code - Whether autopsy report properly admitted in evidence*

CRIMINAL PROCEDURE: *Appeal - Conviction and sentence, against - Murder - Penal Code, s. 302 - Autopsy report - Admissibility - Whether report prepared by a medical doctor authorised under s. 34C Medical Act 1971 - Construction of definition of term 'government medical officer' or 'medical officer' in s. 2 Criminal Procedure Code - Usage of word 'includes' - Whether to extend meaning of term 'government medical officer' - Whether government medical officer requires written authorisation by Director General of Health to perform post mortem on deceased - Whether authorisation implied by virtue of appointment in medical service of public service - Whether a medical doctor within meaning of s. 399(2(b) Criminal Procedure Code - Whether autopsy report properly admitted in evidence - Whether conviction and sentence affirmed*

EVIDENCE: *Autopsy report - Admissibility - Whether report prepared by a medical doctor authorised under s. 34C Medical Act 1971 - Whether a government medical officer requires written authorisation by Director General of Health to perform post mortem on deceased - Whether authorisation implied by virtue of appointment in medical service of public service - Whether a medical doctor within meaning of s. 399(2(b) Criminal Procedure Code - Whether autopsy report properly admitted in evidence*

A ***WORDS & PHRASES:*** *'includes' - Criminal Procedure Code, s. 2 - Whether usage of word 'includes' extends meaning of term 'government medical officer' - Whether intended to embrace any other medical officer who is not member of medical service in public service of Malaysia or in employment of Government of Malaysia*

B

The appellant was charged for the murder of one Alexander Anak Ganok ('the deceased') under s. 302 of the Penal Code. On 8 May 2009, the deceased and a group of people gathered in front of a shop for a drinking session when the appellant C approached the deceased and attacked him by stabbing him. The deceased passed away due to complications of the penetrating injury to the abdomen. The autopsy report (exh. P7), admitted pursuant to s. 399 of the Criminal Procedure Code ('CPC'), stated the findings of the autopsy performed on the deceased by D one Dr Savior Selva Suresh ('Dr Suresh'), a forensic specialist at the Sibu Hospital, which revealed the injuries suffered by the deceased. The trial judge found that the deceased had died as a result of the injuries which were caused by the attack on the deceased by the appellant and that in inflicting the injuries on the E deceased, the appellant, *inter alia*, had the intention of causing death. The appellant was found guilty of the said offence, and was convicted and sentenced to death by hanging. Hence, this appeal. The main issue raised by the appellant was that exh. P7 by Dr Suresh was inadmissible because he was not a medical doctor F authorised under s. 34C of the Medical Act 1971. Therefore, it was argued that Dr Suresh was not a medical officer within the meaning of s. 399(2)(b) as defined in s. 2 of the CPC.

Held (dismissing appeal; affirming conviction and sentence) Per Abdul Aziz Rahim JCA delivering the judgment of the G **court:**

(1) The answer to the appellant's complaint lay in the construction of the definition of the term 'government medical officer' or 'medical officer' in s. 2 of the CPC. The definitive H section reads 'government medical officer' or 'medical officer' includes a medical practitioner ...' The expression 'medical practitioner' in the definition would naturally refer to the 'provisionally registered medical practitioner' or 'fully registered medical practitioner' as defined in s. 2 of the Medical Act I 1971, the only Act that registers all medical practitioners in this country who wish to practice medicine. (paras 20 & 21)

(2) The choice of the word 'includes' in s. 2 of the CPC instead of the word 'means' by the draftsmen or the legislature is deliberate. The reference to 'government medical officer' or 'medical officer' under the relevant section is not confined to a medical officer, either provisionally registered or fully registered, who is employed by the Government of Malaysia and appointed to a medical service in the public service of Malaysia. The usage of the word 'includes' in the definition is to extend the meaning of the term 'government medical officer' to embrace any other medical officer who is not a member of the medical service in the public service of Malaysia or in the employment of the Government of Malaysia and deemed to be a government medical officer or a medical officer for the purpose of s. 399(2) of the CPC if such medical officer is authorised in writing by the Director General of Health pursuant to s. 34C of the Medical Act 1971. A fully registered medical practitioner who is a private practitioner may be authorised by the Director General of Health of Malaysia under the said section of the Medical Act 1971 for the purpose of the CPC. (para 22)

(3) Dr Suresh is a registered medical practitioner in the employment of the Government of Malaysia and is a member of the medical service of the public service of Malaysia and served in the capacity of forensic specialist attached to the government hospital in Sibu. Being a government medical officer, Dr Suresh did not require any written authorisation by the Director General of Health of Malaysia to perform the autopsy or the post-mortem on the deceased. A government medical doctor is deemed to have such authorisation or that the authorisation can be implied by virtue of their appointment in the medical service of the public service of Malaysia. Thus, exh. P7 prepared by Dr Suresh in this case was properly admitted in evidence. (paras 27 & 28)

Bahasa Malaysia *Translation Of Headnotes*

Perayu telah dituduh membunuh satu Alexander Anak Ganok ('si mati') bawah s. 302 Kanun Keseksaan. Pada 8 Mei 2009, si mati dan beberapa orang telah berkumpul di hadapan sebuah kedai untuk sesi minum apabila perayu mendekati si mati dan menyerangnya dan menikamnya. Si mati meninggal dunia akibat komplikasi kecederaan kepada bahagian abdomen. Laporan bedah siasat (eks. P7), yang diterima masuk menurut s. 399 Kanun

Tatacara Jenayah ('KTJ'), menyatakan hasil bedah siasat yang dilakukan ke atas si mati oleh satu Dr Savior Selva Suresh ('Dr Suresh'), seorang pakar forensik di Hospital Sibu, mendedahkan kecederaan-kecederaan yang dialami oleh si mati. Hakim bicara mendapati bahawa si mati telah meninggal dunia akibat kecederaan-kecederaan yang disebabkan serangan ke atas si mati oleh perayu dan dalam menyebabkan kecederaan-kecederaan ke atas si mati, perayu, antara lain, mempunyai niat untuk menyebabkan kematian. Perayu didapati bersalah melakukan kesalahan tersebut, dan telah disabitkan dan dihukum gantung sampai mati. Oleh itu, rayuan ini. Isu utama yang dibangkitkan oleh perayu adalah bahawa eks. P7 oleh Dr Suresh adalah tidak boleh diterima masuk kerana dia bukanlah doktor perubatan yang diberi kuasa bawah s. 34C Akta Perubatan 1971. Oleh itu, ia dihujahkan bahawa Dr Suresh bukan seorang pegawai perubatan dalam maksud s. 399(2)(b) sebagaimana yang ditakrifkan dalam s. 2 KTJ.

Diputuskan (menolak rayuan; mengesahkan sabitan dan hukuman)

Oleh Abdul Aziz Rahim HMR menyampaikan penghakiman mahkamah:

(1) Jawapan kepada aduan perayu terdapat dalam pentafsiran definisi istilah 'pegawai perubatan kerajaan' atau 'pegawai perubatan' dalam s. 2 KTJ. Seksyen definitif dibaca sebagai 'pegawai perubatan kerajaan' atau 'pegawai kerajaan' termasuk pengamal perubatan ...'. Ungkapan 'pengamal perubatan' dalam definisi merujuk kepada 'pengamal perubatan berdaftar sementara' atau 'pengamal perubatan berdaftar sepenuhnya' seperti yang ditakrifkan dalam s. 2 Akta Perubatan 1971, satu-satunya Akta yang mendaftarkan semua pengamal perubatan dalam negara yang ingin mengamalkan perubatan.

(2) Pilihan perkataan 'termasuk' dalam s. 2 KTJ dan bukan perkataan 'bermaksud' oleh penggubal undang-undang atau badan perundangan adalah disengajakan. Rujukan kepada 'pegawai perubatan kerajaan' atau 'pegawai kerajaan' bawah seksyen yang relevan adalah tidak terhad kepada pegawai kerajaan, yang berdaftar secara sementara atau berdaftar secara penuh, yang bekerja dengan Kerajaan Malaysia dan dilantik ke perkhidmatan perubatan bagi perkhidmatan awam Malaysia. Penggunaan perkataan 'termasuk' dalam definisi adalah untuk meluaskan pengertian istilah 'pegawai perubatan

kerajaan' untuk menerima mana-mana pegawai perubatan lain yang bukan ahli pada perkhidmatan perubatan bagi perkhidmatan awam Malaysia atau bekerja dengan Kerajaan Malaysia dan disifatkan sebagai seorang pegawai perubatan kerajaan atau pegawai perubatan bagi maksud s. 399(2) KTJ jika pegawai perubatan itu diberi kuasa secara bertulis oleh Ketua Pengarah Kesihatan menurut s. 34C Akta Perubatan 1971. Pengamal perubatan yang berdaftar sepenuhnya yang merupakan seorang pengamal swasta boleh diberi kuasa oleh Ketua Pengarah Kesihatan Malaysia bawah seksyen Akta Perubatan 1971 tersebut untuk tujuan KTJ.

(3) Dr Suresh adalah pengamal perubatan yang berdaftar yang bekerja dengan Kerajaan Malaysia dan adalah ahli perkhidmatan perubatan kepada perkhidmatan awam Malaysia dan berkhidmat dalam kapasiti pakar forensik di hospital kerajaan Sibu. Sebagai pegawai perubatan kerajaan, Dr Suresh tidak perlu diberikan kebenaran secara bertulis oleh Ketua Pengarah Kesihatan Malaysia untuk melakukan bedah siasat ke atas si mati. Seorang doktor perubatan kerajaan adalah dianggap diberi kuasa sedemikian atau kuasa itu adalah tersirat menurut kuasa pelantikan mereka dalam perkhidmatan perubatan bagi perkhidmatan awam Malaysia. Oleh itu, eks. P7 yang disediakan oleh Dr Suresh dalam kes ini telah diterima sebagai keterangan secara wajar.

Case(s) referred to:

Lee Boon Siah & Ors v. PP [2014] 3 CLJ 584 CA ***(refd)***

PP lwn. Ismail Ali [2009] 8 CLJ 46 HC ***(refd)***

PP v. Hun Peng Khai & Ors & Other Cases [1984] 2 CLJ 290; [1984] 2 CLJ (Rep) 391 HC ***(refd)***

PP v. Lam Peng Hoa & Anor [1996] 3 CLJ 747 HC ***(refd)***

PP v. Lin Lian Chen [1990] 2 CLJ 1020; [1990] 2 CLJ (Rep) 746 HC ***(refd)***

PP v. Ramasami Simmathri & Ors and Another Application (No.2) [2001] 4 CLJ 690 HC ***(refd)***

PP v. Subramaniam [1968] 1 LNS 112 HC ***(refd)***

Tenaga Nasional Bhd v. Tekali Prospecting Sdn Bhd [2002] 3 CLJ 624 CA ***(refd)***

Winnie Yek Leh Cheng v. PP (Rayuan Jenayah No. Q-05-261-2010) (unreported) ***(refd)***

Legislation referred to:

Criminal Procedure Code, ss. 2, 399(1), (2), (b)
Electricity Supply Act 1990, s. 2
Medical Act 1971, s. 34C
Penal Code, s. 302

Other source(s) referred to:
GC Thornton, *Legislative Drafting,* 4th edn, p 146

For the appellant - Joseph Tang; M/s Tang & Co
For the respondent - Nahra Dollah; DPP

[Appeal from High Court, Sibu; Criminal Trial No: 45-5-2010]

Reported by Suhainah Wahiduddin

JUDGMENT

Abdul Aziz Rahim JCA:

[1] The appellant, Yii Ming Tung was charged for murder under s. 302 of the Penal Code which reads:

> Bahawa kamu pada 8.5.2009 jam lebih kurang 9.30 malam, bertempat di sebelah Bank Standard Chartered, Jalan Tukang Besi, dalam Daerah Sibu, dalam Negeri Sarawak, telah membunuh Alexander Anak Ganok (730509-13-5093), dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

The appellant was convicted and sentenced to death by hanging after a full trial. This is his appeal.

The Material Facts

[2] On 8 May 2009 at about 9pm a group of friends comprising Mansorah bin Su'ud ("PW2"), Rajis ak Akau ("PW3") and Regina ak Francis ("PW4") and the deceased Alexander ak Ganok gathered at the five-foot way in front of a shop near to the Standard Chartered Bank at Jalan Blacksmith, Sibu for a drinking session.

[3] While they were there drinking, the appellant approached the deceased and attacked him with a sharp object. He also attacked and injured PW2 who tried to protect the deceased. Five days later the deceased passed away due to complication of the penetrating injury to the abdomen. The appellant was subsequently charged in court for the offence of murder under s. 302 of the Penal Code.

[4] The prosecution relied on the testimonies of PW2, PW3 and PW4 who were the eye-witnesses to the incident. Their testimonies show that they were having drinks at the five-foot way. PW2 was

leaning against the wall about 3 metres away from PW3 and PW4. PW3 was about 2½ metres from the deceased and PW4 was sitting just next to the deceased at an arm's length distance.

[5] PW2 said that while they were having drinks, the appellant came and stabbed the deceased on the back with a sharp object which he estimated to be about 5½ inches long with the width the size of his thumb ie, 1.5 cm, without saying a word. But he could not see clearly what the sharp object was as it was dark. He said he was already drunk (having consumed five to six bottles) at the time the appellant appeared and stabbed the deceased. Nevertheless, he tried to stop the appellant from attacking the deceased and the appellant also attacked and hurt him. PW2 fled and was subsequently admitted to the Sibu Hospital for treatment.

[6] In cross-examination PW2 said the appellant stabbed the deceased only once at the back and at the waist. PW2 said he was not really drunk at the time.

[7] PW3 testified that he was drunk at the time of the incident but still alert to the happenings around him. He saw the appellant coming towards where they were drinking and there was at first a fight between the deceased and the appellant. Thereafter the appellant stabbed the deceased's back first and then the chest. He did not see the weapon used by the appellant as he was some distance from the deceased.

[8] He confirmed that after stabbing the deceased, the appellant also stabbed PW2, who then fled from the scene. He and PW4 also ran away from the scene.

[9] PW4 testified that the appellant suddenly appeared at the scene and she heard him said "I want to stab Alexander for revenge" prior to stabbing the deceased on the back, chest and waist with a knife.

[10] In cross-examination PW4 said the appellant stabbed the deceased at the waist first followed by the chest and then at the back. According to PW4, they had consumed one bottle of liquor before the incident and they were not really drunk. PW4 admitted that with only street light lighting the five-foot way, she could not see things very clearly.

[11] PW2, PW3 and PW4 were all able to positively identify the appellant in the dock as the assailant as they used to see the appellant around before the incident. They had also identified the appellant in the ID parade held by the police.

[12] The autopsy report (exh. P7), admitted pursuant to s. 399 of the Criminal Procedure Code ("CPC"), stated the findings of the autopsy performed on the deceased by one Dr Savior Selva Suresh, forensic specialist at the Sibu Hospital, on 14 May 2009. It reveals, amongst others, the following injuries:

(a) 14 cm long linear midline surgical incision wound with 18 metal staples over the abdomen above the umbilicus level;

(b) 1.4 cm long suture wound with one suture seen over the front of right chest – 8cm below the right nipple and 6cm from the midline;

(c) 2.4 cm long sutured wound with three sutured seen over the front of right lower chest – 5.5 cm from the midline and 8cm below the injury no. 2;

(d) 1 x 0.5 cm x cavity deep surgical incised wound over the supra pubic region (catheterisation for bladder drainage); and

(e) 1.5 x 0.5 x 4 cm stab wound over the midline of the back – 19 cm above the gluteal groove.

[13] In this appeal and before us, the appellant did not challenge the finding of facts by the learned judge:

(a) That the deceased, Alexander ak Ganok, died as a result of injuries sustained by him;

(b) That the injuries suffered by the deceased were caused by or the result of the attack on the deceased by the appellant; and

(c) That in inflicting the injuries on the deceased, the appellant had the intention of causing death; or the intention of causing such bodily injuries as the appellant knew to be likely to cause the death; or the intention of causing bodily injuries and such bodily injuries intended and inflicted were sufficient in the ordinary course of nature to cause death, and had committed the acts that were imminently dangerous that they must in all probability cause death or such bodily injuries are likely to cause death.

The Issue And The Appellant's Submission

[14] The main issue raised by the appellant in this appeal is that the autopsy report (exh. P7) by Dr Savior Selva Suresh MD a forensic specialist at Sibu General Hospital, Sibu, Sarawak

admitted under s. 399 of the CPC is inadmissible because, it was submitted for the appellant, Dr Suresh is not a medical doctor authorised under s. 34C of the Medical Act 1971 (Act 50). Dr Suresh, who conducted the post-mortem on the deceased, was not called by the prosecution to testify as to his autopsy report at the trial. As such it was argued and submitted that there is no medical evidence as to the injuries suffered by or inflicted on the deceased that allegedly caused his death.

[15] The learned counsel for the appellant submitted that there is no evidence to show that Dr Suresh had authorisation in writing by the Director General of Health of Malaysia under s. 34C of the Medical Act 1971 to perform functions specified in that section one of which is to perform post-mortem on the dead to establish the cause of death. Therefore it was argued that Dr Suresh was not a medical officer within the meaning of s. 399(2)(b) as defined in s. 2 of the CPC.

[16] For the purpose of this appeal the relevant provisions of s. 2 and s. 399(2) of the CPC and s. 34C of the Medical Act 1971 are reproduced below:

Section 2 of CPC

"government medical officer" or "medical officer" includes a medical practitioner who has been given by the Director General of Health Malaysia, an authorisation in writing under section 34C of the Medical Act 1971 (Act 50) to perform functions specified in that section.

And

Section 399 of CPC

(1) Any document purporting to be a report under the hand of any of the persons mentioned in subsection (2) upon any person, matter or thing examined or analysed by him or any document purporting to be a report under the hand of the Registrar of Criminals upon any matter or thing relating to finger impressions submitted to him for report may be given in evidence in any inquiry, trial or other proceeding under this Code unless that person or Registrar shall be required to attend as a witness:

(a) …

(b) …

(2) The following are persons to whom the provisions of this section apply:

(b) Government medical officer;

(c) Chemists in the employment of any Government in Malaysia or of the Government of Singapore.

And

Section 34C of Medical Act 1971

34C. (1) The Director General may authorise in writing any medical practitioner who is registered under section 14 and not being a medical practitioner in the public service to undertake any of the following functions, that is:

(a) Investigation, examination, treatment or management of any patient; or

(b) Perform an autopsy or post-mortem investigation of any deceased person.

in any healthcare facility and services

(1A) The Director General may delegate his power under subsection (1) to any State Health Director or any equivalent officer.

(2) A medical practitioner who is authorized under subsection (1) or (1A) to perform any of the functions referred to in paragraphs (1)(a) and (b) shall be deemed to be a Government Medical Officer for the purposes of the Criminal Procedure Code (Act 593) and any other relevant laws in Malaysia.

[17] To support his argument learned counsel for the appellant cited to us an unreported Court of Appeal case of *Winnie Yek Leh Cheng v. PP* (Rayuan Jenayah No. Q-05-261-2010) where the prosecution sought to admit into evidence the autopsy report by the same witness Dr Suresh on the deceased in that case under s. 399(1) of the CPC without calling the doctor to come and testify at the trial. It was impressed upon us that in that case the Court of Appeal ruled that the autopsy report was not admissible under s. 399(1) of the CPC because Dr Suresh was not a government medical officer under that s. 399(2)(b); accordingly the conviction in that case was set aside and the appeal was allowed. Our comment on this submission by the learned counsel for the appellant is that we are unable to express any views on that case because no written grounds of judgment was made available to us and the case was not reported. We were only shown the sealed copy of the order of the Court of Appeal in that case. We have to take the learned counsel's word for it.

The Respondent's Submission

[18] The learned Deputy Public Prosecutor submitted that the autopsy report (exh. P7) is admissible. The prosecution had complied with the requirement of s. 399(1) of the CPC. The autopsy report exh. P7 was served on the appellant two (2) months before the trial and the appellant had acknowledged receipt as evident in exh. P4. It was also submitted that the appellant was informed of his right to call the doctor who prepared the autopsy report to testify in court by giving the prosecution a three (3) days notice. There was no such notice given to the prosecution by the appellant. The learned Deputy Public Prosecutor cited a string of authorities – *PP v. Lin Lian Chen* [1990] 2 CLJ 1020; [1990] 2 CLJ (Rep) 746, *PP v. Ramasami Simmathri & Ors and Another Application (No.2)* [2001] 4 CLJ 690, *PP lwn. Ismail Ali* [2009] 8 CLJ 46, *PP v. Lam Peng Hoa & Anor* [1996] 3 CLJ 747 and *PP v. Subramaniam* [1968] 1 LNS 112; [1969] 1 MLJ 145 – to persuade and convince us that the autopsy report exh. P7 is admissible as evidence in law and urged upon us to re-visit this court's decision in *Winnie Yek Leh Cheng* (*supra*).

Our Opinions

[19] We will begin by observing that the appellant did not dispute the fact that Dr Suresh is a qualified medical doctor and was at the material times the forensic specialist at Sibu General Hospital, Sibu, Sarawak. Being attached to the Sibu General Hospital which is a government hospital, Dr Suresh was no doubt a government medical officer unless there is evidence to show otherwise; and there was no such evidence produced by the appellant. The one and only complaint by the appellant is that Dr Suresh was never authorised under s. 34C of the Medical Act 1971 by the Director General of Health of Malaysia to perform any of the functions under that section; and one of the functions is to perform autopsy or post-mortem investigation of any deceased person. Therefore, according to the appellant, Dr Suresh is not a government medical officer within the meaning of s. 399(2) of the CPC read together with s. 2 of the CPC which defines 'government medical officer' or 'medical officer' for the purpose of the CPC.

[20] In our view the answer to the appellant's complaint lies in the construction of the definition of the term 'government medical officer' or 'medical officer' in s. 2 of the CPC.

[21] We note that the definitive section reads 'government medical officer' or 'medical officer' includes a 'medical practitioner ...'. In our opinion the expression 'medical practitioner' in the definition would naturally refer to the 'provisionally registered medical practitioner' or 'fully registered medical practitioner' as defined in s. 2 of the Medical Act 1971 since it is the only Act that registers all medical practitioners in this country who wish to practice medicine.

[22] The emphasis is on the word 'includes' in the definition of the terms 'government medical officer' or 'medical officer' in s. 2 of the CPC. In our view the choice of the word 'includes' instead of the word 'means' by the draftsman or the legislature in the above definition is deliberate. It is to show that the reference to 'government medical officer' or 'medical officer' under the relevant section is not confined to a medical officer, either provisionally registered or fully registered, who is employed by the Government of Malaysia and appointed to a medical service in the public service of Malaysia. The usage of the word 'includes' in the definition is to extend the meaning of the term 'government medical officer' to embrace any other medical officer who is not a member of the medical service in the public service of Malaysia or in the employment of the Government of Malaysia and deemed to be a government medical officer or a medical officer for the purpose of s. 399(2) of the CPC if such medical officer is authorised in writing by the Director General of Health pursuant to s. 34C of the Medical Act 1971. What this means is that, a fully registered medical practitioner who is a private practitioner may be authorised by the Director General of Health of Malaysia under the said section of the Medical Act 1971 for the purpose of the CPC.

[23] The meaning of the word 'includes' to indicate extension instead of limitation was discussed in *PP v. Hun Peng Khai & Ors & Other Cases* [1984] 2 CLJ 290; [1984] 2 CLJ (Rep) 391; [1984] 2 MLJ 318, which was referred to by the Court of Appeal in *Lee Boon Siah & Ors v. PP* [2014] 3 CLJ 584; [2014] MLJU 11. In *Tenaga Nasional Bhd v. Tekali Prospecting Sdn Bhd* [2002] 3 CLJ 624; [2002] 2 MLJ 707, another Court of Appeal case, the court speaking through the judgment of Gopal Sri Ram JCA (as he then was) in discussing the scope of the definition of the word 'equipment' in s. 2 of the Electricity Supply Act 1990 which reads:

> 'equipment' includes any item for such purposes as generation, conversion, transmission, distribution or utilization of electrical energy, such as machines, transformers, apparatus, measuring instruments, protective devices, wiring materials, accessories and appliances ...

had this to say with regards to the word 'includes' in the definition:

> Particular emphasis is to be placed upon the word 'includes' in this definition. On settled principles of statutory interpretation, it is clear that when an Act of Parliament employs the expression 'includes' to define some other word or expression, the intention is to leave the meaning of the expression defined open ended.

[24] The two cases cited above support the view that the usage of the word 'includes' in the drafting of the definition 'government medical officer' or 'medical officer' in s. 2 of the CPC shows that the definition is non-exhaustive as compared to the usage of the word 'means' which indicates an exhaustive definition.

[25] Textbook writers on legislative drafting and interpretation of statutes also support the view that the usage of the word 'includes' in drafting a provision of a legislation indicates an extended meaning of the terms or things that the provisions were meant to describe. G.C. Thornton in his authoritative book "*Legislative Drafting*" (4th edn.) said at p. 146 on the usage of the word 'includes' as a drafting tool to extend a particular definition or meaning of a term in the statute as follows:

> An extending definition stipulates for the defined term a meaning that in some respect goes beyond the meaning or meanings conveyed in common usage by the term. Such a definition usually adds to the conventional meaning an element of assigned meaning.

[26] The authors of "*N S Bindra's Interpretation of Statutes*" (9th edn.) (Publisher: LexisNexis Butterworths) have these to comments on the usage of the word 'includes' in the drafting of a provision of a statute:

> The word 'includes' has an extending force, and does not limit the meaning of the term to the substance of the definition. However, it is not an inflexible rule that the word 'include' should be read always as a word of extension without reference to the context. (pp. 1523 to 1524)
>
> ...

A …

It is a well-known rule of interpretation that the word 'include' is used as a word of enlargement and ordinarily implies that something else has been given beyond the general language which proceeds it. To add to the general clause a species which does
B not naturally belong to it. (p. 1524)

…

…

C The word 'includes' is a word of enlargement rather than of restriction, but cannot be taken to be exhaustive when used in a definition clause.

When it is mentioned that a particular definition 'includes' certain things it should be taken that the legislature intended to settle a
D difference of opinion on the point or wanted to bring in other matters that would not properly come within the ordinary connotation of the word or expression or phrase in question.

The word 'include' in the statutory definition is generally used to enlarge the meaning of the preceding words or phrase occurring
E in the body of the statute, and when it is not used, these words or phrases must be construed as comprehending not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include.

F

Therefore, it is our considered view that the definition of 'government medical officer' or 'medical officer' in s. 2 of the CPC has an extended meaning to include a private medical practitioner who is not a government medical officer or a medical officer who
G has been authorised in writing under s. 34C of the Medical Act 1971 to perform the functions specified under the section.

[27] Accordingly, we find no merit in the argument by the learned counsel for the appellant that Dr Suresh is not a medical officer within the meaning of s. 2 of the CPC. We observe that there is
H no question about Dr Suresh being, at the material time, a registered medical practitioner in the employment of the Government of Malaysia and is a member of the medical service of the public service of Malaysia and served in the capacity of forensic specialist attached to the government hospital at Sibu
I General Hospital, Sarawak. Being a government medical officer, Dr Suresh did not require any written authorisation by the Director

General of Health of Malaysia to perform the autopsy or the post-mortem on the deceased. In our view, a government medical doctor is deemed to have such authorisation or that the authorisation can be implied by virtue of their appointment in the medical service of the public service of Malaysia. The written authorisation by the Director General of Health under s. 34C of the Medical Act 1971 to perform autopsy or post-mortem on a deceased person is only required by a registered medical practitioner other than those in the employment of the Government of Malaysia and a member of the medical service of the public service of Malaysia.

[28] On the foregoing arguments we hold Dr Suresh is a government medical officer and that the autopsy or post-mortem report (exh. P7) prepared by him in this case was properly admitted in evidence.

[29] Besides the issue of Dr Suresh not being authorised under s. 34C of the Medical Act 1971, the appellant also raised other grounds in his petition of appeal. However, in the course of submission and arguments before us, learned counsel for the appellant did not pursue these grounds. He was contented only to rely on the principal issue discussed above relating to the authorisation under s. 34C of the Medical Act 1971. We therefore deem it that the appellant has abandoned all these other grounds.

[30] That being the case, and in view of what we have said above on the principal issue, we find no merits in this appeal and we accordingly dismiss it. We affirm the conviction and sentence imposed by the High Court on the appellant.